D.B. CIVIL SPECIAL APPEAL(W)NO.993/2006

State of Rajasthan & Ors.
Vs.
Satyaveer Singh Sinsinwar

DATE OF ORDER :: 01-03-2007

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri H.V. Nandwana, for the State.
Shri Suresh Pareek, for the respondent.

The case was listed for hearing on the condonation application. The appeal has been filed 18 days after expiry of the period of limitation, therefore accompanied by condonation application. We looked into merit of the case so that condonation may not be a futile exercise, and accordingly heard counsel for the appellant as also the respondent who has filed caveat.

This appeal is directed against the order of the learned Single Judge allowing the writ petition of the respondent with a direction to the appellants to appoint him on the post of Physical Training Instructor (PTI)Gr.III awarding him 10 bonus marks on the basis of sports certificate. It is not in dispute that for participating in State Level Competition in which the respondent claims to have participated, the participant is entitled to 10 bonus marks. The case of the appellants is that the respondent was not entitled to bonus marks as

the certificate was not countersigned by the prescribed authority as laid down in circular no.12102 dated 6.8.1998.

From perusal of the circular it appears that prior to 1.1.1998 the sports certificate was required to be countersigned by the Director, Primary and Secondary Education/Deputy Director, Primary and Secondary Education. The event in question pertains to the year 1992, and therefore it was required to be countersigned by either the Director, Primary and Secondary Education or Deputy Director, Primary and Secondary Education. From the certificate, typed copy whereof is enclosed as annexure-9 and the original was produced at the time of hearing, it is clear that the certificate was signed by four authorities including the Deputy Director of Education, Kota circle, Kota.

Counsel for the appellant tried to make a fine distinction between countersignature and signature. We do not find any substance in the submission. The object underlying countersigned by the Deputy Director/Director is to make the document authentic. Having regard to the fact that the certificate was signed by the Deputy Director of Education, amongst others, prima facie makes the document authentic, and therefore we are satisfied that there was due compliance of the requirement and the candidature of respondent was wrongly rejected.

Counsel for the appellant then submitted that only one post of PTI Gr.III was advertised against which one Sushma Devi was appointed, and there being no advertised post available, the respondent cannot be appointed. We find no substance in this submission either. If the candidature of the respondent was wrongly rejected on untenable grounds, it is clear that appellants cannot take advantage of their own mistake. Having regard to the fact that Sushma Devi was appointed in the year 2003, we would not like to go behind the same as faintly suggested by the counsel for the appellant. She was appointed in her own right and for no fault of hers, it would not be proper to question her appointment at this stage. For the same reason, respondent cannot be made to suffer for the mistake committed by the appellant. As the candidature of the respondent was in order, the appellant authorities committed an apparent error in rejecting the same. The direction of the learned Single Judge to appoint him would thus appear to be in accordance with law.

We thus find no merit in this appeal which is accordingly dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Praveen